

AMENDED IN SENATE MAY 18, 2010

AMENDED IN SENATE APRIL 19, 2010

**SENATE BILL**

**No. 1304**

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**Introduced by Senator DeSaulnier**

**(Coauthor: Senator Liu)**

*(Coauthors: Assembly Members Eng, Furutani, and Swanson)*

February 19, 2010

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An act to add Part 5.5 (commencing with Section 1508) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1304, as amended, DeSaulnier. Employment: leave and benefits.

Existing law requires that employees of the state who have exhausted all available sick leave be permitted to take a leave of absence with pay, not exceeding 30 days for the purpose of organ donation and not exceeding 5 days for bone marrow donation, as prescribed.

This bill would require private employers to permit employees to take similar paid leaves of absence for organ and bone marrow donation. The bill would require a private employer to restore an employee returning from leave for organ or bone marrow donation to the same position held by the employee when the leave began or an equivalent position. The bill would prohibit a private employer from interfering with an employee taking organ or bone marrow donation *leave* and from retaliating against an employee for taking ~~such~~ *that* leave or opposing an unlawful employment practice related to organ or bone marrow donation leave. The bill would also create a private right of action for an aggrieved employee to seek enforcement of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Part 5.5 (commencing with Section 1508) is  
2 added to Division 2 of the Labor Code, to read:

3  
4 PART 5.5. ORGAN AND BONE MARROW DONATION  
5

6 1508. This part shall be known and may be cited as the  
7 Michelle Maykin Memorial Donation Protection Act.

8 1509. For purposes of this part, the following terms have the  
9 following meanings:

10 (a) "Employee" and "employee benefits" have the same  
11 meanings set forth in Section 1500.

12 (b) "Employer" means any person, partnership, corporation,  
13 association, or other business entity that employs 15 or more  
14 employees.

15 1510. (a) Subject to subdivision (b), an employer shall grant  
16 to an employee the following paid leaves of absence:

17 (1) A leave of absence not exceeding 30 days to an employee  
18 who is an organ donor in any one-year period, for the purpose of  
19 donating his or her organ to another person.

20 (2) A leave of absence not exceeding five days to an employee  
21 who is a bone marrow donor in any one-year period, for the purpose  
22 of donating his or her bone marrow to another person.

23 (b) In order to receive a leave of absence pursuant to subdivision  
24 (a), an employee shall provide written verification to his or her  
25 employer that he or she is an organ or bone marrow donor and that  
26 there is a medical necessity for the donation of the organ or bone  
27 marrow.

28 (c) Any period of time during which an employee is required  
29 to be absent from his or her position by reason of being an organ  
30 or bone marrow donor is not a break in his or her continuous  
31 service for the purpose of his or her right to salary adjustments,  
32 sick leave, vacation, annual leave, or seniority. *During any period*  
33 *that an employee takes leave pursuant to subdivision (a), the*  
34 *employer shall maintain and pay for coverage under a group health*

1 *plan, as defined in Section 5000(b) of the Internal Revenue Code*  
2 *of 1986, for the full duration of the leave.*

3 (d) This part does not affect the obligation of an employer to  
4 comply with a collective bargaining agreement or employee benefit  
5 plan that provides greater leave rights to employees than the rights  
6 provided under this part.

7 (e) The rights provided under this part shall not be diminished  
8 by a collective bargaining agreement or employee benefit plan  
9 entered into on or after January 1, 2011.

10 (f) *An employer may require as a condition of an employee's*  
11 *initial receipt of bone marrow or organ donation leave that an*  
12 *employee take up to five days of earned but unused sick or vacation*  
13 *leave for bone marrow donation and up to two weeks of earned*  
14 *but unused sick or vacation leave for organ donation, unless doing*  
15 *so would violate the provisions of any applicable collective*  
16 *bargaining agreement.*

17 (g) *Notwithstanding existing law, bone marrow and organ*  
18 *donation leave shall not be taken concurrently with any leave taken*  
19 *pursuant to the federal Family and Medical Leave Act of 1993 (29*  
20 *U.S.C. Sec. 2601 et seq.) or the California Family Rights Act*  
21 *(Sections 12945.2 and 19702.3 of the Government Code).*

22 (h) *Leave provided for pursuant to this section may be taken in*  
23 *one or more periods.*

24 1511. An employer shall, upon expiration of a leave authorized  
25 by this part, restore an employee to the position held by him or  
26 her when the leave began or to a position with equivalent seniority  
27 status, employee benefits, pay, and other terms and conditions of  
28 employment. An employer may decline to restore an employee as  
29 required in this section because of conditions unrelated to the  
30 exercise of rights under this part by the employee.

31 1512. (a) An employer shall not interfere with, restrain, or  
32 deny the exercise or the attempt to exercise a right established by  
33 this part.

34 (b) An employer shall not discharge, fine, suspend, expel,  
35 discipline, or in any other manner discriminate against an employee  
36 who does either of the following:

37 (1) Exercises a right provided under this part.

38 (2) Opposes a practice made unlawful by this part.

39 1513. (a) An employee may bring a civil action in the superior  
40 court of the appropriate county to enforce this part.

- 1 (b) The court may enjoin any act or practice that violates this
- 2 part and may order any equitable relief necessary and appropriate
- 3 to redress the violation or to enforce this part.

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